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In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Brunswick Division

In the matter of:	)	
	)	Chapter 7 Case
CORY D. STOWELL )		
JENNIFER STOWELL	)	Number <u>95-21042</u>
	)	
<i>Debtors</i>	)	

**ORDER ON OBJECTION TO SALE**

This matter comes before the Court on the objection of American General Finance, Inc. ("American General") to the proposed sale of real estate by Cory and Jennifer Stowell ("Debtors"). A hearing to consider the objection was held in Brunswick, Georgia, on November 12, 1996, after which the Court took the matter under advisement. For the reasons that follow, American General's objection will be sustained.

The facts are not in dispute. Debtors filed Chapter 13 bankruptcy on December 11, 1995. As originally filed, Debtors' sixty-month plan proposed to pay the holder of the first mortgage, Baxley Federal Savings Bank, in full and outside of the plan. Debtors also proposed to split the \$11,098.30 claim of the second mortgage holder, American General, pursuant to 11 U.S.C. Section 1322(c)(2), valuing the secured portion of the claim at \$6,000.00 and treating the remainder as unsecured. American General

objected to the proposed valuation and at confirmation a settlement was reached.<sup>1</sup> On July 11, 1996, the Court confirmed Debtors' plan approving the valuation of American General's claim at \$8,500.00 secured and \$2,598.30 unsecured. The plan as confirmed proposed to pay a dividend of 41.12% to unsecured creditors or \$1,068.42 of American General's unsecured claim.

Soon thereafter, Debtors moved from Baxley to Brunswick, Georgia and attempted to sell the real estate. Pursuant to a sales contract with Mrs. Jerry Wiggins, Debtors agreed to sell their residence for \$52,000.00 and on October 3, 1996, filed this Motion for Leave to Sell Property requesting the Court's approval. Because the property sold for \$5,000.00 more than the previously confirmed value established only three months earlier, American General objected to the proposed pay-out of only the secured portion of its claim. On November 12, 1996, the Court held a hearing to consider Debtors' Motion and the objection of American General. At that time, all parties agreed that the claim of Baxley Federal Savings Bank would be paid immediately in full from the proceeds of sale along with any outstanding tax liens. The parties also agreed to pay the secured claim of American General in full. However, the parties disagreed on whether to remit the remaining proceeds to the Chapter 13 Trustee for the benefit of all creditors or to satisfy fully the unsecured claim of American General. Accordingly, the Court approved the sale

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<sup>1</sup> During confirmation, the parties apparently estimated the claim of Baxley Federal Savings Bank as \$38,500.00. Because for tax purposes the real estate was appraised at \$47,000.00, American General agreed to value its claim at \$8,500.00 secured and the remainder unsecured.

authorizing full payment to Baxley Federal Savings Bank and any necessary taxing authority while taking under advisement American General's objection. Debtors have been ordered to remit any remaining proceeds to the Chapter 13 Trustee pending an Order by this Court.<sup>2</sup>

In support of their position, Debtors cite 11 U.S.C. Sections 1327 and 1330 contending that the effect of confirmation binds the creditor to the agreed value. Debtors assert that upon confirmation American General's lien was avoided to the extent of their unsecured claim and, therefore, American General has no greater right to the excess proceeds than any other creditor of the Debtors. Debtors also note that the confirmation order has not been modified or revoked.

American General disputes Debtors' contentions. American General asserts that Debtors cannot receive a benefit intended for those who have completed their Chapter 13 rehabilitation prior to the completion of their plan payments. American General cites In re Holiday, 1993 WL 733165, \*3 (Bankr.S.D.Ga.), in support of its position. In that case, the Court held that a Debtor could not include as a requirement within its Chapter 13 plan the release of liens by undersecured creditors upon payment of the secured portion of their claim. Id. The Court noted that because 11 U.S.C. Section 349(b) reinstates any lien previously voided by Section 506(d) upon the dismissal of a case,

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<sup>2</sup> As of the date of this Order, Debtors have paid American General through the plan approximately \$725.20 in principal and \$85.00 in interest on their \$8,500.00 secured claim.

it would be against the provisions of the Code to require the release of liens any time prior to the Debtors last opportunity to dismiss his case, in other words the date of discharge. Id. American General contends that this case also involves a Chapter 13 Debtor trying to receive discharge benefits prematurely and requests that the proposed sale be denied. I agree.

A central tenet of bankruptcy law is that liens pass through bankruptcy unaffected by a discharge. *See Long v. Bullard*, 117 U.S. 617, 620-621, 6 S.Ct. 917, 918, 29 L.Ed. 1004 (1886). Except where expressly provided in the Code, courts should be unwilling to modify this rule and each exception should be narrowly construed. Section 1322(c)(2) provides one of these exceptions by allowing a debtor to modify the rights of a creditor holding an interest in the debtor's primary residence if the note's original final payment is due before the final payment of the plan. Section 1322(c)(2) permits a debtor to value a creditor's claim paying the secured portion in full and only a percentage of the unsecured portion. What is clear, as American General concedes in its brief, is that "if the Debtors were to continue to make payments under this plan, then, at the end of the case, American General would have to satisfy its security deed." *See Brief of American General*, Doc. No. 39., p.2, Dec. 2, 1996. What is unclear is whether the lien is avoided at the time of confirmation, or only upon completion of the Debtor's plan.

In this case, Debtors having been in Chapter 13 bankruptcy for

approximately one year and having proposed a five-year plan now request permission to sell the property in issue and avoid the lien to the extent of the unsecured claim at confirmation. This issue is similar to the one confronted by the Holiday Court. A debtor has an absolute right to voluntarily dismiss a case at any time. 11 U.S.C. § 1307. If the Debtor elects to dismiss his case prior to the completion of the plan then 11 U.S.C. Section 349(b) reinstates any lien previously voided.

Accordingly, I hold that because a debtor is not entitled to receive the full benefit of Section 1322(c) until the completion of all plan payments, a creditor's lien is not avoidable until the date of discharge. Therefore, any excess proceeds from the sale of the residence after payment of all secured real estate claims must be applied first to satisfy the unsecured portion of American General's claim.

IT IS THEREFORE THE ORDER OF THIS COURT that the Trustee shall remit proceeds sufficient to satisfy, in full, the real estate claim of American General Finance, Inc., and disburse the balance to unsecured creditors in this case.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of January, 1997.